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## **MEXICAN MOTOR CARRIER ACCESS TO THE UNITED STATES**

The Mexican motor carrier safety issue from the very beginning was suspect.

For those of us who are involved in or study the trucking industry, the decision to deny Mexican truckers access to the United States was a deal between the White House and the Teamsters. As a result of the release of the 82-page NAFTA dispute-panel unanimous decision, we know the deal constituted a United States breach of its obligations under NAFTA. Alleged safety issues were contrived and false. Continued distortions of the Mexican threat by the Teamsters, and by some in Congress, do a disservice to the public. Therefore, it is time for some reasonable assessments of the reality of Mexican access and its potential impact on the U. S. trucking industry and the general public. My assessment will treat the magnitude of Mexican access to the U.S. motor-carrier market, the labor issues connected to it, the likelihood of successful market penetration by Mexican carriers, the genuineness of the safety issue, the likely impact on costs to U.S. shippers, and U.S. DOT's role in allowing an unnecessary loophole in operating authority requirements.

### **The Magnitude of a Mexican Presence**

According to the U.S. Bureau of Census figures, there are 733,900 Class 7 and 8 motor carriers operating in the United States. Class 7 and Class 8 include the heavy over-the-road motor carrier. That number does not include another 63,000 that failed

to return a report, suggesting a total of 796,900 U.S. motor carriers. Of the carriers reporting, 538,700 are truck load (TL) and 195,200 are less than truck load (LTL). The number of requests for operating authority by Mexican motor carriers as of July 20, 1999, totaled 184 applications. Based on statements of CANACAR, the Mexican Trucking Association, denying an interest on the part of Mexican carriers to operate in the United States, and based on these numbers, we would see that the Mexicans would account for .0002 percent of the trucking industry. If one were to look only at the TL sector, the target market carved out by the Mexicans in the North American Free Trade Agreement (NAFTA) negotiations, Mexican applications for operating authority amount to only .0003 percent of the U.S. truck-load carriers. Mexican presence in the TL market will hardly be noticeable.

Finally, the assumption that if Mexican truckers are allowed in, there will be more trucks than ever on U.S. highways is unsupportable. Since Mexican truckers are permitted to carry only international cargo (cargo with an origin or destination outside the territory of the nation in which the cargo is carried), truck volumes will not increase unless trade increases dramatically. There is also a limit on the availability of equipment (tractors and trailers) no matter how much trade might increase. Any carriage by Mexicans simply offsets what would have been carried by U.S. truckers. Given the minuscule number of Mexican operating authority applications (even assuming they were all approved), and assuming that all these carriers would somehow carry additional trade, the Mexican truckers would still not be noticed.

The actual impact of Mexican operations is likely to be small and positive: small because of sheer numbers, and positive because their presence could enhance service to domestic shippers. The potential displacement of U.S. drivers ordinarily carrying international cargo by Mexican entrants into the international cargo market would allow U.S. drivers to carry domestic cargo often delayed because of the shortage of U.S. truck drivers. In short, Mexican carriage of some international cargo frees up more U.S. drivers to improve domestic carriage, a clear benefit for the U.S. shipper and consignee.

### **The Labor Issue**

Labor options under NAFTA severely limit the ability of Mexicans to capitalize on low wages paid to Mexican drivers operating in the United States. Only Chapter 12 (Cross-Border Services), and Chapter 16 (Temporary Entry for Business Persons) address and define the extent of labor activity afforded to Mexican drivers operating in the United States. There are only two options for Mexican motor carriers. The Mexican carrier with operating authority in the United States may use a Mexican driver living in Mexico on a temporary cross-border basis with limited time allowed in the United States. The Immigration and Nationalization Service (INS) allows these temporary workers up to one-year maximum and six-months minimum in the United States. While some will claim that this is a threat to U.S. truck driver jobs, a closer examination suggests otherwise. A Mexican driver who lives and begins his work day in Mexico but subsequently enters the United States with cargo is subject to unique tax issues in some ways brought about by the time constraints contained in the INS regulations.

Because of his cross-border status, the Mexican driver legally maintains his residence and principal place of employment in Mexico. Therefore, the Mexican driver is not provided the special U.S. tax treatment given to Mexicans who live in Mexico, or Canadians who live in Canada but enter to the United States for their normal work day. What this means is that a Mexican driver operating on a cross-border basis is obligated to pay Federal income tax to the United States, not just on earnings generated in the United States, but on all foreign earnings, including those generated in Mexico.

Additionally, since under NAFTA and INS rules, the primary source of remuneration must be in Mexico in pesos, the Mexican motor-carrier firm must either augment the drivers' earnings or provide expense allowances to pay for the increased costs of doing business in the United States. These expenses include the costs of fuel, food, lodging, and incidentals in the United States.

Restrictions on Mexican drivers such as primary source of remuneration; international character of work; and prohibition against entering the U.S. local labor market or shopping for international cargo or carrying U.S. domestic goods severely limit opportunities and increase costs to the Mexican trucking company. In short, the cross-border Mexican carrier has few advantages except perhaps for operations solely restricted to nearby U.S. border states where there is, according to one scientific study, a TL market suited for Mexican motor carriers.

Option two under Chapter 16 of NAFTA relates to professionals only. The chapter and 8 CFR 214 of INS regulations are so specific that they contain an all-

inclusive list of what professional NAFTA covers. Truck drivers are NOT included. Of course, a Mexican motor carrier who establishes a firm in the United States could openly recruit Mexican drivers who qualify for H-1B Non-Immigrant status and use them up to three years providing the Mexican-owned U.S. carrier could prove a driver shortage. In this scenario, the Mexican driver is an employee of a U.S. firm which is legally obligated to provide all the requirements that are given to U.S. drivers. These drivers working for a Mexican carrier established in the United States under NAFTA are still restricted to carrying only international cargo. However, once admitted to the U.S. as an H-1B, the Mexican driver could be recruited and hired away by a U.S.-owned and controlled motor carrier and be used to carry domestic cargo within the time period allowed under the H-1B Non-Immigrant classification. Therefore, the Mexican carrier operating a firm in the United States must pay a competitive wage.

The implementation of NAFTA with respect to Mexican truck drivers operating in the United States seriously restricts driver use, protects the U.S. local labor market, and suggests labor costs to the Mexican firm operating in the United States that are equal to, or nearly equal to those of the U.S. motor carrier. Thus, it appears at this time that there may not be a significant labor advantage for Mexican motor carriers operating in the United States under NAFTA.

### **Competitive Constraints**

It is difficult to support the concept that Mexican motor carriers which will operate in the United States will successfully compete with U.S. carriers. First,

Mexican carriers are limited to carrying international cargo. Second, they have to establish a system which provides cargo for their return trip, not an easy task. Third, given the likelihood of equipment and cargo imbalances, Mexican carriers will have to pool equipment in the United States at either terminals or lots and hire the personnel (U.S. jobs) necessary to operate and maintain their facilities in the United States. Fourth, they need sales offices, an adequate customer base, and a sophisticated information system to allow them a competitive advantage and interface with intermediaries, Customs, and customers at a level greater than or equal to that of their U.S. competitor. Fifth, Mexican carriers must meet all the federal and state requirements that every U.S. carrier must meet. Unlike their drayage counterparts on the border, Mexican long haulers must pay U.S. highway use tax. Mexican carriers operating in the United States must demonstrate financial responsibility, show proof of insurance or bond, or be self-insured. The insurance issue is a quite serious one for Mexican carriers. Their premiums to carry insurance sufficient to meet federal minimal liability standards will be exceptionally high because of the lack of actuary tables on Mexican motor carriers. Additionally, there is likely to be built into those high premiums, revenue to cover unfulfilled judgments should a Mexican carrier lose litigation in the United States. If not, the U.S. insurance industry by “spreading the risk” among all its customers would have to increase the costs of insurance to their U.S. motor carrier clients.

Mexican carriers must also meet all U.S. motor carrier safety regulations and conform to all U.S. motor carrier obligations. Finally, they must break into or penetrate

the strong U.S. market sufficiently to survive, let alone to realize a profit.

### **The Safety Issue**

At this time, enough has been disclosed and written to dispel the myth of inferior Mexican motor carrier safety. While there are many sources of evidence which demonstrate that the Mexican long-haul motor carrier is every bit as safe as U.S. and Canadian long haul carriers, three factual reports should be enough to demonstrate that safety is NOT an issue. The U.S. Department of Transportation (DOT) asked its Inspector General (IG) to investigate truck safety at the southern U.S.-Mexico border, presumably to support Clinton's decision not to admit Mexican carriers into the United States. In the DOT IG's 1998 report, it was expressly stated by the Inspector General that views differ on whether the data used to support the claim of unsafe Mexican trucks are statistically representative of the universe of Mexican trucks. The report did make it clear that given there were no Mexican long haul carriers to inspect, the inspection was made of Mexican drayage or transfer trucks used to ferry goods from one side of the border to the other — the worst of motor carrier equipment. What followed, however, was the use of these data to compare U.S. and Canadian long haul trucking to Mexican drayage trucking. This was a blatant distortion of fact. And if the reader read it carefully, he or she would see that the Inspector General acknowledged the distorted and dishonest comparison. Publicly reported results of examinations of both Mexican and U.S. drayage trucks by federal and state officials over many years demonstrated that, in fact, "out of service" rates for Mexican and U.S. drayage were

essentially the same.

One year later in November 1999, DOT's Inspector General released another report, again presumably to support the Administration's contention that unsafe Mexican trucks were operating illegally in the United States through inventive lease agreements with U.S. carriers. In this report, the IG cited numerous interceptions of Mexican-long haul carriers found operating in the United States. What the IG did not highlight from that report was Exhibit D. An analysis of Exhibit D showed that of all the Mexican-long haul carriers inspected in the United States, only about 15% were put "out of service." For the first time, the U.S. had empirical evidence on Mexican long-haulers. However, what that evidence showed was that in comparison to the "out of service" rates of U.S. carriers (26%) and Canadian carriers (17%), the Mexican long-hauler was ALMOST TWICE as safe as the U.S. long-hauler.

Finally, the most obvious evidence came by way of the NAFTA Dispute Panel's ruling. The panel's determinations included the following finding. Although the United States, through a loophole in the law, is allowing the operation of 150 Mexican-domiciled, U.S.-owned carriers; 5 Mexican domiciled, Mexican-owned carriers; and 1 Mexican-domiciled, Mexican owned (Mexican-Canada transit, only) carrier in or through the United States, the United States could not provide the Dispute Panel one piece of evidence of a specific safety problem with these Mexican carriers.

### **Costs to the Shipper and/or Consignee**

Since December 18, 1995, the United States has breached its obligations under

NAFTA. This breach has denied the opportunity for revenue to qualified Mexican long haulers and has helped to perpetuate an archaic and costly procedure along the southern border. That procedure is known as drayage or transfer carriage. The practice of drayage is not only expensive but also risky for carriers and shippers alike. The average dollar cost of drayage ranges between \$75 to \$125 per crossing. There have been millions and millions of crossings since December 1995. In 1999 in Laredo, Texas, alone, a total of 2,793,166 trucks crossed Laredo bridges over 12 months. If all these trucks were lined up bumper-to-bumper, they would form a line 34,386 miles long and would stretch from Laredo to the Canadian border 20.7 times. Assuming 60% were carrying cargo for which there was a drayage charge of \$100 dollars, that cost alone would amount to \$167,589,960 of cost which would be unnecessary if opening the border for trucks had led to the opening of the border for cargo. It is difficult, if not impossible, to calculate the loss of time and money caused by maintaining an outdated transportation practice which is an essential condition for an outdated Mexican Customs Broker practice.

### **Nonfeasance and the U.S. Department of Transportation**

When the ICC Termination Act went into effect in January 1996, USDOT was given clear guidance in publishing rules. These rules were to insure that the distinction between common carrier and contract carrier was eliminated (Sections 14101 and 14706). The effect of eliminating this distinction would result in, among other changes, the removal of a loophole which would allow Mexican motor carriers to file for operating authority as contract carriers and therefore not be required to carry cargo

insurance (49 CFR 387.303 (c)).

In summary, the impact of Mexican trucking in the United States will be insignificant and likely limited by choice to the U.S. border states, providing a service to U.S. long-haulers. National treatment of Mexican carriers will benefit not only the U.S. trucking industry in the United States, it will benefit the U.S. trucking industry in Mexico. Opening the border is merely the first step in reducing costs for U.S. shippers, and providing faster service to them. The politics tied to this issue is not only distorting the truth, it also is jeopardizing the economy of the United States even further should Mexico be forced to retaliate justly to defend its rights as an equal party to the North American Free Trade Agreement.